Breakout 2:

What does Brexit mean for chemical regulations?

Chemical Watch Global Business Summit
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Contents

• Our panel
  – With a brief introduction to each organisation

• A discussion in four parts:
  1. Where are we now?
  2. What would a no-deal Brexit involve?
  3. How could the UK stay in REACH?
  4. What happens if the UK doesn’t stay in REACH?

• 5. Concluding discussion
Our panel

- **Susanne Baker**, Head of Programme, Environment and Compliance, techUK
- **Jean-Pierre Feyaerts**, Formerly Federal Public Service ‘Economy’, Belgium
- **Riku Rinta-Jouppi**, Partner and Head of Global Compliance, Reachlaw Ltd, Finland
- **Moderator: Michael Warhurst**, Executive Director, CHEM Trust
About CHEM Trust

• A charity working at EU, UK, German & global levels to protect humans & wildlife from harmful chemicals
• Focus on identification of, and action on, hormone disrupting chemicals
• Working with scientists, technical processes and decision makers, in partnership with other civil society groups
• See our blog & twitter for more: www.chemtrust.org @chemtrust
CHEM Trust’s view of Brexit and REACH

• **REACH is the most sophisticated chemicals regulatory system in the world**
  – Chemical regulation is hard – tens of thousands of chemicals in millions of applications.
  – REACH is not perfect, but after 11 years it is making a real difference
    • See [http://www.chemtrust.org/reach-10-years-on/](http://www.chemtrust.org/reach-10-years-on/)

• **Brexit threatens to remove REACH from the UK**
  – This would have many disadvantages, including for the protection of human health and the environment in the UK

• **In our view the UK should aim to stay in REACH, and the EU27 should allow this, as long as the UK accepts sensible conditions**

• **Most of industry is in agreement with us**
  – Fearing supply chain disruption and increased costs
  – We have worked with the EU and UK chemical industries to highlight these issues – including joint letters and adverts
    • see [https://www.chemtrust.org/brexit/](https://www.chemtrust.org/brexit/) for more information
1. Where are we now?

Things have moved in recent weeks – and hours.....
Main Brexit options

1. No-deal Brexit
   - A crash out – but how long could the UK really stay in this situation?
   - ‘Phase 2’ Negotiations on a free trade agreement (FTA) would be needed, but would be difficult and the UK would be in a very weak position

2. Unilateral UK revocation of Article 50 (=Remain)
   - Available to UK until exit day. Has been viewed as politically unacceptable until now, but now supported by petition of >5.8 million people

3. Current Withdrawal Agreement
   - A) ‘May’s deal’ and then exit into transition, then years of ‘Phase 2’ negotiation on FTA
   - B) With modifications to the Political Declaration – e.g. if MPs vote for a closer e.g. Norway-like + customs relationship, then years of negotiation on FTA [other modifications possible]

   • A referendum on 2 or more of the above (e.g. May’s deal vs Remain)
     - But timing is a challenge (would need a longish extension).
New Brexit dates

• If existing Withdrawal Agreement passed by UK Parliament this week, then ‘technical extension’ until 22\textsuperscript{nd} May \textit{(the day before EU elections start)}
  – Then into transition & UK-EU Trade Agreement negotiations

• Default Brexit day now 12\textsuperscript{th} April \textit{(last day to organise EU elections)}
  – Unless UK commits to holding EU elections + asks for long extension (31\textsuperscript{st} March 2020?)
    • There may - or may not – be other conditions from EU27 before long extension is given.
  – Otherwise no deal Brexit on 12\textsuperscript{th} April
    • Some suggestion that there might be a ‘no deal’ preparatory extension to 22\textsuperscript{nd} May, with no negotiations. NB: revoking Article 50 would still legally be available until exit.
    – During a long extension it would be expected that UK’s negotiating position will be modified
      – e.g. leadership elections, general election, possible referendum

• Withdrawal agreement including ‘no change’ transition until end 2020
  – But can be extended for “one or two years” (decision to be taken by 1\textsuperscript{st} July 2020); these dates might well be modified in the event of a long Article 50 extension
Options for final outcome

1. Remaining in the EU
2. UK-EU FTA with UK distant from EU
   - UK not in REACH, but something in place to fulfil backstop
     • e.g. NI could still be in customs union & following REACH?
3. UK-EU FTA similar to Norway plus customs
   - UK in REACH
4. Something between 2 & 3?
   - UK could be in REACH as a result of agreement between UK & EU
5. No deal – *but can this really be an end point?*
No deal

• No deal Brexit is the default outcome on April 12th, or at the end of an extension of the Article 50 period
  – (except a ‘technical extension’ with an exit deal already agreed)
  – NB: The default at the end of the transition period is the backstop
• Most experts view no deal as a very bad situation
  – The UK Government, Commission, EU27 and business have spent lots of time & money planning for it
  – Many UK Brexit leaders support no deal, as do many of the public, particularly UK Conservative party members, according to polls
• No deal is unlikely to be sustainable in the medium term
  – But that doesn’t mean it won’t happen
What is happening today?

• The UK House of Commons is debating and voting on different Brexit options, today and next Monday (‘group stage’ then ‘final’)
  – It is doing this independent of the Government, which is very unusual in the UK system
  – The aim is to come out with a preferred option; this could have multiple components, e.g. a specific sort of deal and then a referendum

• But:
  – It is hard for UK MPs to force the Government to do things
  – Even if a destination is agreed, e.g. ‘Norway plus’, negotiating this would be part of phase 2; how can MP’s force this outcome to happen?
    • EU27 could help by modifying the political declaration, but this is not very binding
  – A General Election would disrupt everything
1. Where are we now?

Questions of clarification
2. What happens in a no deal Brexit?

The UK Government has developed a ‘statutory instrument’ which will come into force in the event of ‘no deal’ and copies across many aspects of REACH & makes the UK Health and Safety Executive into a new ‘Agency’
CHEM Trust view on UK no-deal plans

• A basic copy-across of REACH, but:
  – No commitment to mirror EU outcomes on hazardous chemicals
  – Greatly reduced stakeholder participation and oversight
  – No commitment to update regulations in line with REACH
    • For our analysis, see https://www.chemtrust.org/chemical-regulation-no-deal-brexit/

• To create this inferior system, business needs to do a lot of work...
  – Currently passing through UK parliament, with some debate
2. What happens in a no deal Brexit?

Discussion
3. How could the UK stay in REACH?
How could the UK stay in REACH?

- **The minimum that the UK needs to do to stay in REACH**
  - Accept a court – ECJ, EFTA or something very similar
  - Accept EU decisions in REACH – UK may be in the room, but without a vote (like Norway)
  - Retain EU chemical-related laws, including future EU decisions & changes (H&S, industrial pollution etc) = dynamic alignment

- **The UK would remain in REACH if it was in a Norway-type relationship**
  - The situation in the ‘backstop’ is more complex

- **There are benefits for the EU27 of keeping the UK in REACH, if the UK follows rules**
  - We argue that REACH should be separated from the debates around ‘cherry picking’ the single market, free movement etc.
  - Note that REACH is environmental legislation, not just internal market
3. How could the UK stay in REACH?

Discussion
What if the UK doesn’t stay in REACH?

- i.e. the UK leaves the EU & must set up its own chemical regulatory system
- Probably based on the ‘no deal’ system which has already been developed
- But the system could be changed, deregulated etc
Risk to UK if outside REACH

- **Risks to human health and environment in UK**
  - Less knowledge on chemicals
    - No access to REACH database
  - Strong risk of weaker regulation vs EU
    - No commitment to follow EU decisions
    - History shows that UK tends to be less willing to regulate than EU
  - Proposed chemical agency has no institutionalized stakeholder representation, therefore likely to be influenced by best connected/most affected stakeholders

- **Risk of trade deals which make things worse** – e.g. US is currently pushing its regulatory approach in trade deals
Risks to EU if UK outside REACH

• Possible deregulatory pressure on EU chemicals regulation
  1. If UK doesn’t apply Authorisation requirements then production can move from EU to UK
  2. UK could become deregulated chemical production base (e.g. increasing factory emissions)

• Trans-boundary pollution
  – From emissions of chemicals from the UK

• Reduced global power of REACH
  – ?UK pushed towards US, ‘inaction based’, system?
4. What if the UK doesn’t stay in REACH?

Discussion
5. Concluding discussion

• Where are we now?

• Where could we be in the future?

• How can we help move things in the right direction?